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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
Nonnenmacher 2

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on **December 10, 2007**

Signature **[Signature]**

Typed or printed name **John Higon**

Application Number
10/777,775

Filed
02/12/2004

First Named Inventor
Nonnenmacher

Art Unit
2157

Examiner
Sahera Halim

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- ☒ attorney or agent of record.
Registration number **35,938**
- ☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

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December 10, 2007
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of **1** forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Form PTO/SB/33 Supporting Reasons

Application S/N 10/777,775

In the Office Action, all of the claims were rejected under 35 USC §102(e) as being anticipated by Killian (U.S. Patent No. 6,438,592). The same reference and rejection basis were applied in the prior office action, and in its response to that prior action, the Applicant traversed the rejection basis while amending the then pending independent claim to more clearly distinguish over the cited art. At this point, the Applicant believes that its claims are clearly patentable over Killian, and therefore requests reconsideration and reversal by the review panel. The basis for this request for reconsideration is detailed below.

The invention here is directed to a method and system for determining quality of service parameters for a plurality of links in a network. In particular, the invention contemplates a down-loadable applet for transmission from a server to at least one client, which applet operates to cause the client to initiate communications links with a plurality of target hosts -- **such hosts being independent of the server** -- and to determine quality-of-service (QoS) parameters for each of the communications links established with the plurality of target hosts. After collecting such link QoS parameter data for a determined interval, the client applet compiles such data and uploads it to the server. At the server, such link QoS parameter data from the at least one client is combined with data from other clients operating in a similar manner with the server to develop a substantially network-wide indication of link performance in the network.

Although Killian is generally concerned with quality of service between a server and a client, the thrust of its teaching is directed to end-to-end performance measurement. Thus,

while performance problems resulting from problems in the connecting communications links will be within the purview of Killian's performance measurement, such performance problems are at least as likely to occur in the server or the client itself, as Killian's disclosure makes clear, and no means is taught by Killian to separately identify communications-link QoS measurements. Equally important, the performance measurements taught by Killian are solely determined between a server and its client (or between a linked group of servers acting together and a given client). Nothing in the teaching of Killian can reasonably be read to show or suggest the idea of the invention here where a client operates to establish communications links with a plurality of target hosts independent of the client's server and collects and processes link QoS measurements for the communications links so established.

Each of the independent claims includes a limitation directed to that distinguishing feature, and the Applicant accordingly submits that such claims cannot be anticipated by Killian, which teaches no such feature. Withdrawal of the §102 rejection of Applicant's claims is accordingly respectfully requested.

Applicant notes the §112 formality rejection of claim 10, resulting from a typographical error as to the number of the parent claim for that dependent claim. The parent claim for dependent claim 10 should have been shown as claim 8. The Applicant authorizes a correction of that error by Examiner amendment, or would file a supplemental amendment to the same effect if that were the preferred course.